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How Marc Galanter Became Marc Galanter

Richard Abel

HOW MARC GALANTER BECAME *MARC GALANTER*

*Richard Abel**

INTRODUCTION

That this year's Clifford Symposium should honor Marc Galanter seems a given—Marc has been an essential contributor to so many earlier symposia. There would be a similar sense of gratitude at many other gatherings of lawyers, social scientists, judges, and policy makers, all of whom have benefitted from Marc's knowledge, wisdom, and imagination on a wide range of topics. But how did Marc Galanter become *Marc Galanter*? I offer a sketchy, idiosyncratic, and necessarily incomplete version.[1] I met Marc in the fall of 1970, when he was a Senior Fellow of the Law and Modernization Program at Yale Law School, where I was teaching. He has been a model and mentor ever since, publishing a (very long) article of mine in the *Law & Society Review*, and then proposing that I succeed him as editor. Although I am nearly a decade younger, our lives have many parallels: early exposure to a culture very different from the United States (India for Marc, Kenya for me); three children (the eldest both lawyers and occasional collaborators); and a focus on legal institutions—courts, alternative dispute processes, and lawyers.

Chicago is a particularly appropriate city in which to honor Marc because it was his intellectual home for two decades. Although he grew up in Philadelphia, his mother was inspired by a talk by Robert Hutchins, then president of the University of Chicago, to give Marc a copy of *How to Read a Book*, by Mortimer Adler,[2] Hutchins's collaborator. Marc was hooked and applied early to the University of Chicago, finishing his last semester of high school early, the summer before matriculating (thereby exempting himself from the dreaded gym requirement). The college required fourteen year-long courses, but Marc placed out of six during the entrance examinations, allowing him to complete his B.A. in two years and graduate at the age of

* Connell Distinguished Professor of Law Emeritus and Distinguished Research Professor, UCLA.

1. I am grateful to Marc for two hours of telephone interviews and copies of several essays in which he reflected on his intellectual odyssey.

2. MORTIMER J. ADLER, HOW TO READ A BOOK: THE ART OF GETTING A LIBERAL EDUCATION (1940).

nineteen. Hungry for more intellectual stimulation, he enrolled in graduate school, choosing philosophy because it seemed to offer the best opportunity to continue reading great books and asking big questions. The philosophy department's most charismatic figure was Richard McKeon, an Aristotelian; other graduate students gravitated toward Rudolf Carnap's analytic philosophy or became Leo Strauss acolytes. But Marc was never a disciple, preferring instead to chart his own path. He discovered that it was not philosophy. Debating what to do as he was finishing his M.A. after three years, Marc followed the example of his good friend Saul Mendlovitz, who had left sociology graduate work for law school. Although Marc had no interest in practicing, law seemed like a more grounded version of the moral issues that had originally attracted him to philosophy. Having spent five years in Chicago, he decided to go to the University of Pennsylvania (Penn) to be near his parents. After the explosion in enrollment caused by returning veterans, Marc's cohort was unusually small, and he was given a prestigious full scholarship.

Marc hated law school, which he found conventional and arid, devoid of the intellectual excitement he had enjoyed at the University of Chicago. Searching for stimulation, he contacted the chair of Penn's philosophy department, who offered him a teaching fellowship the following year, which he accepted. He spent the summer in Chicago finishing his M.A. thesis, but felt totally adrift, reluctant either to continue studying law at Penn or to return to philosophy. Then he had a Eureka moment: he would finish law school, but supplement the dry exegesis of doctrine with his own critical reflections on law and the social context in which it operated. Inspired by that image, he walked over to the University of Chicago Law School Dean's Office and applied to transfer, explaining that he needed a scholarship equivalent to the one he had at Penn. He received both the next day. Even at the University of Chicago, law school was still law school. But Marc's Penn grades made him eligible for the law review, for which he edited the book review section. There were several empirical projects funded by the Ford Foundation, including Hans Zeisel's jury study and Soia Mentschikoff's work on arbitration.[3] Max Rheinstein became a mentor to Marc.

Approaching graduation, Marc pursued an interest in labor law, interviewing with the International Ladies' Garment Workers' Union and other unions in New York. He initially accepted the sole staff

3. Telephone Interview with Marc Galanter, John and Rylla Bosshard Professor of Law and South Asian Studies, University of Wisconsin-Madison (Mar. 20, 2012).

lawyer position with the American Civil Liberties Union in Chicago, but, expecting to be drafted, instead took up University of Chicago Law School Dean Edward Levi's offer of a Bigelow Teaching Fellowship for the 1956–1957 academic year. In the spring of 1957, Alan Barton, a sociologist on the jury project who later directed Columbia University's Center for Applied Social Research, asked Marc to co-teach a seminar on the legal profession, his first exposure to the subject. Stewart Macaulay, another Bigelow Fellow, introduced Marc to a former U.S. Department of State official who had established a South Asia-focused program at Stanford Law School and offered Marc a two-year fellowship, the second year of which he would spend in India. Marc had long been interested in India, having considered an exchange program in Calcutta a few years earlier. He then applied for and received a Fulbright grant.[4] His project—formulated just two years after the Supreme Court decided *Brown v. Board of Education*—was to examine India's abolition of untouchability.

Marc's expectations were inevitably shaped by what he knew in the United States: a grass roots civil rights movement and an activist Supreme Court. He found India "enormously different . . . from what [he] knew and what [he] imagined would be there."[5] Marc described it as a "difficult" year: "I thought I had made a mistake" by plunging directly into field research without the year of preparation Stanford University had offered.[6] But he never regretted his choice of India, which came to be a comfortable, even inevitable, second home. What he discovered in India, its effort to deal with the "Scheduled Castes" (the official euphemism for "untouchables"), turned out to prefigure what the United States later embraced under the rubric of affirmative action.

Marc went to Stanford University for a one-year research appointment after his Fulbright, but finding himself once again at loose ends when that assignment ended, he wrote to Donald Meiklejohn, a philosopher who taught at the University of Chicago and had been something of a mentor. Marc jumped at the offer of a one-year position teaching Sociology 3, one of those year-long components of the Hutchins college. When that ended, he was offered another three years, renewed for a second three, and was then given tenure, only dimly aware that he was even being considered for it. He ended up staying for twelve years. Although he taught widely in the undergrad-

4. For more information on the Fulbright Scholar Program, see *About*, FULBRIGHT SCHOLAR PROGRAM, www.cies.org/about.htm (last visited Jan. 19, 2013).

5. Telephone Interview with Marc Galanter, *supra* note 3.

6. *Id.*

uate social science curriculum, his scholarly home was the burgeoning South Asia program at the University of Chicago, which was becoming the leading center of such studies in the United States. Its ample resources allowed Marc to organize conferences, including one on the Indian legal profession. Indian studies were rapidly expanding in the United States, but in India, law languished at the bottom of the prestige hierarchy of scholarly subjects. Marc's work was appreciated in India, but he received no feedback. His only contact with the law school at the University of Chicago was an annual lunch with Max Rheinstein, who had previously read some of Marc's work.

In 1967, Marc was invited to a conference on Asian law at the East-West Center in Honolulu. Because it coincided with his marriage to Eve, they made the trip their honeymoon. At the conference, Marc re-encountered Lawrence Friedman.[7] Lawrence talked about his collaboration with Stewart Macaulay at the University of Wisconsin and invited Marc to visit. Marc accepted the invitation, observed their path-breaking course on *Law and the Behavioral Sciences*, and received a copy of the mimeographed materials, which were not published until 1969.[8]

Marc returned to Chicago very excited about what he had seen: "Here was somebody looking at [American] law in a way that felt like what I was doing in India, an outsider perspective on law."[9] He started reading the growing interdisciplinary literature, which led him to revise his teaching package—instructors were able to vary the basic social science course. With June Tapp (a psychologist) and Mark Haller (a historian), Marc created a "law and society" variant of one of the year-long social science courses. He also offered an upper-class elective in which students read ten books, including *The American Jury*,[10] *Justice Without Trial*,[11] *Law and the Balance of Power*,[12] *Lawyers on Their Own*,[13] *Varieties of Police Behavior*,[14] *The Zoning*

7. Marc knew Lawrence's wife, Leah, from college, but Lawrence had graduated from the University of Chicago before Marc matriculated.

8. LAWRENCE M. FRIEDMAN & STEWART MACAULAY, LAW AND THE BEHAVIORAL SCIENCES (1969).

9. When I asked Marc about the significance of having been raised in a Yiddishist tradition, he responded with what he called a "Dave Trubek" analogy: Yiddishism is to Jewish observance as law and society is to conventional legal analysis.

10. HARRY KALVEN, JR. & HANS ZEISEL, THE AMERICAN JURY (1966).

11. JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY (1966).

12. STEWART MACAULAY, LAW AND THE BALANCE OF POWER: THE AUTOMOBILE MANUFACTURERS AND THEIR DEALERS (1966).

13. JEROME E. CARLIN, LAWYERS ON THEIR OWN: A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO (1962).

Game,[15] *Trial Courts in Urban Politics*,[16] and *Little Groups of Neighbors: The Selective Service System*.[17] Bernard "Barney" S. Cohn, an Indianist historian and anthropologist who wrote about law, introduced Marc to Richard "Red" Schwartz (a sociologist) and Paul Bohannan (an anthropologist), both of whom were then at Northwestern University. The four met for lunch in downtown Chicago three or four times a year. This led Red, who was editor of the *Law & Society Review*, to ask Marc to edit the papers from his conference on the Indian legal profession for a special double issue.

Before the Law and Society Association held its first meeting in Buffalo in 1975, it organized sessions at the annual conferences of the American Political Science Association and the American Sociology Association. Marc was able to attend because both groups always met in Chicago (as most professional bodies did before plane travel became common). The twenty-member board of the Law and Society Association—then almost the entire population of law and society scholars—also convened annually in Chicago, and, as a special issue editor, Marc also attended those meetings.

Lawrence Friedman introduced Marc to David Trubek, and the two of them then served together on the board of the International Legal Center. In the fall of 1970, David brought Marc to Yale Law School as a senior scholar in the Law and Modernization Program, recently funded by the U.S. Agency for International Development.[18] That was Marc's first encounter with law school since 1957. Although a cohort of social scientists had been adjuncts at Yale a decade earlier (including Richard Schwartz, Jerome Skolnick, and Philip Selznick), the law school was again flirting with social science. It had hired Stanton Wheeler (the first sociologist—perhaps the first non-lawyer—tenured by any law school), who directed the Russell Sage Program (which included Donald Black, Austin Sarat, Malcolm Feeley, Jack Katz, and Robert Kagan, among others). Robert Stevens—a Yale law professor who had written seminal books on English lawyers and

14. JAMES Q. WILSON, VARIETIES OF POLICE BEHAVIOR: THE MANAGEMENT OF LAW AND ORDER IN EIGHT COMMUNITIES (1968).

15. RICHARD F. BABCOCK, THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES (1966).

16. KENNETH M. DOLBEARE, TRIAL COURTS IN URBAN POLITICS: STATE COURT POLICY IMPACT AND FUNCTIONS IN A LOCAL POLITICAL SYSTEM (1967).

17. JAMES W. DAVIS, JR. & KENNETH M. DOLBEARE, LITTLE GROUPS OF NEIGHBORS: THE SELECTIVE SERVICE SYSTEM (1968).

18. Several years later, Marc and Dave wrote a joint article about their experiences, first in India and Brazil, respectively, and then in American development studies. *See* David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062.

spent time in East Africa[19]—led a seminar on the legal profession in which Marc participated. Marc completed the first draft of *Why the "Haves" Come Out Ahead*. Reading it then, I wrote Marc that we, as Americans, now had our own Max Weber—the highest praise imaginable.

The year after he returned to Chicago from Yale, Marc visited at SUNY Buffalo at the invitation of Red Schwartz, who had become the first non-lawyer dean of an American law school. Offered a tenured position at the end of his visit, Marc found it an easy decision. He had been at the University of Chicago from 1948 to 1971, with a year away in each of Philadelphia, India, and Palo Alto, and a semester in New Haven. For a family that now included two small children, life was much easier in the Buffalo suburbs than in Hyde Park. And Red was seeking to infuse SUNY Buffalo Law School with social science. Marc had also accepted the editorship of the *Law & Society Review*, for which SUNY Buffalo provided significant financial support. Marc brought to this new role his hands-on experience as book review editor of the *University of Chicago Law Review* more than twenty years earlier.

After revising *Why the "Haves" Come Out Ahead*, Marc started sending it out to journals in the fall of 1971. The article was rejected by the *Law & Society Review*, the *American Political Science Review*, and at least a half dozen major law journals. A *Yale Law Journal* editor wrote Marc a personal note: the article was "fascinating and well-written," but mistaken because courts *could* advance the claims of the "have-nots."[20] Two decades after *Brown v. Board of Education*, faith in judicial activism was at its peak, inspired by federal judges like J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit and Frank M. Johnson of the U.S. District Court for the Middle District of Alabama.[21]

Red Schwartz proposed an ingenious way for Marc to publish his "*Haves*" paper. At the time, Marc was editing the *Law & Society Review*. Red suggested that Marc announce a special issue and bring in another editor to accept the article. Marc accepted the suggestion and

19. BRIAN ABEL-SMITH & ROBERT STEVENS, IN SEARCH OF JUSTICE: SOCIETY AND THE LEGAL SYSTEM (1968); BRIAN ABEL-SMITH & ROBERT STEVENS WITH ROSALIND BROOKE, LAWYERS AND THE COURTS: A SOCIOLOGICAL STUDY OF THE ENGLISH LEGAL SYSTEM 1750–1965 (1967).

20. Telephone Interview with Marc Galanter, *supra* note 3.

21. *Id.* Years later, Marc met the former *Yale Law Journal* editor at a Harvard Law School function. The editor (now also a professor) extolled Marc's "wonderful paper," and claimed, "I teach [it] every year." Marc gently reminded him, "You rejected it." The editor demurred, "That's impossible." Marc (always the pack rat) found the letter and sent a copy to the editor.

chose Robert Kidder (an anthropologist working on India) and Bliss Cartwright (a skilled quantitative methodologist who had been a Russell Sage Fellow at Yale and was now Marc's colleague at SUNY Buffalo) to co-edit the double special issue on civil litigation.[22] We know the happy ending: it became the thirteenth "most-cited law review article of all time."[23]

During his first few years at SUNY Buffalo, Marc taught only a seminar. He persuaded the university to make a visiting offer to Stewart Macaulay, who had recently returned to Madison from two years in Chile (another member of the first cohort of law and society scholars whose third-world experience was formative) and was looking for an institution that might hire his wife, Jackie. When Marc needed to start teaching a "regular" law school course a year later, Stewart suggested contracts and generously offered to coach Marc in using Stewart's materials.

Stewart (who had returned to Wisconsin) and Dave Trubek (who had moved there from Yale)[24] convinced the University of Wisconsin to offer Marc a visiting position. Marc had lectured for a week at the summer-long National Science Foundation's Law and Social Science Workshop in Madison in the summer of 1968 and returned to teach in it the following year. Through those experiences, he had gotten to know several regular Wisconsin faculty members, including Joel Grossman, Stuart Scheingold (both political science), and Jack Ladinsky (sociology). Wisconsin, which had a major South Asian studies center and was a Library of Congress depository for Indian materials, also gave him a courtesy appointment in South Asian studies. Marc received a permanent offer at the conclusion of his visiting year.

Red had been very generous, and Marc had enjoyed excellent colleagues at SUNY Buffalo, but he found the prospect of Madison too attractive. It also offered to match the sabbatical he had earned at SUNY Buffalo, once he devised a project. Marc decided to finish his book on India, having put it aside at SUNY Buffalo (which had no interest in the sub-continent). Robert Hayden, Marc's graduate student at SUNY Buffalo, was about to begin his dissertation research using the South Indian language Telagu, which only Wisconsin of-

22. *See* 9 LAW & SOC'Y REV. 1 (1974); *id.* at 163 (1975). Marc's article was published in the first issue. *See* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

23. *See* Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 767 tbl.1 (1996).

24. For a discussion of the Yale Diaspora, see LAURA KALMAN, YALE LAW SCHOOL AND THE SIXTIES: REVOLT AND REVERBERATIONS (2005).

fered. Robert spent the year in Madison learning Telagu and working as Marc's research assistant on the book.[25]

II. MARC GALANTER'S RESEARCH INTERESTS

The rest is history—or bibliography. Marc has written so much, on such diverse topics, that a comprehensive overview would be intolerably superficial. Instead, I will briefly discuss six of his primary areas of interest.

A. India

Looking back thirty years later on his Fulbright year in India, Marc reflected, "Immersion in another culture is a celebrated method for exposing our presuppositions and showing us that familiar arrangements are problematic rather than the way things have to be."[26] He was moved, he added, by "the conceit that my relative detachment (and my capacity to stumble over what is obvious to the insider) may produce a contribution that usefully complements those of insiders."[27]

It is striking how many others who entered the field of law and society in the 1960s and 1970s had a formative experience in developing countries: David Trubek (Brazil), Stewart Macaulay (Chile), William Felstiner (Turkey and India), Boaventura de Sousa Santos (Brazil), Richard Schwartz (Israel and India), Robert Kidder (India), and of course the legal anthropologists, notably those whom Laura Nader gathered in the Berkeley Village Law Project (including Michael Lowy, June Starr, Barbara Yngvesson, Klaus-Friedrich Koch, and Harry Todd).[28]

In the same retrospective, Marc wrote that he came to India having been taught in America that law was "an integrated purposive system,

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25. MARC GALANTER, COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA (1984).

26. MARC GALANTER, LAW AND SOCIETY IN MODERN INDIA 296 (Rajeev Dhavan ed., 1989).

27. GALANTER, *supra* note 25, at xix. I expressed similar sentiments (if less elegantly) in an early article on my Kenya fieldwork:

> Why study the legal systems of other times or places? . . . The increased understanding to be gained by such intellectual exploration seems to me similar in origin to the pleasure any of us takes in travel. Differences of physical environment, modes of social intercourse, or patterns of culture awaken us to phenomena which at home are so familiar as to be almost invisible. When we resume our mundane round, the residue of such impressions compels us to recognize the contingency of our own ways, and leads us to look for explanations.

Richard L. Abel, *A Comparative Theory of Dispute Institutions in Society*, 8 LAW & SOC'Y REV. 217, 219 (1973).

28. *See* THE DISPUTING PROCESS—LAW IN TEN SOCIETIES (Laura Nader & Harry F. Todd eds., 1978).

residing in a hierarchy of agencies, moved by and applying a hierarchy of norms."[29] He further stated: "The study of India provided a series of lessons that undermined that picture by violating my expectations of continuity and correspondence between law and society."[30] In India, he found that

- a legal system may flourish and become deeply rooted although dissonant with central cultural values, embodied in other institutions;
- a legal system may be internally disparate, embodying discordant norms and institutionalizing conflicting practices in different levels and agencies;
- the divergence of legal norm and social practice is not transient and exceptional, but normal and institutionalized;
- deliberate legal changes do not ordinarily produce the effects their proponents avow; and the effects they do produce are largely unanticipated;
- the effects of legal regulations depend not only on the conduct of legal authorities, but on the consumers or users of the law and their differential capability to use it;
- [t]he law as a system of symbols diverges from the law as a system of operative controls.[31]

Immersion in India thus initiated a process of unlearning the myths propagated by American law schools. Marc began that retrospective with

> a joke about the fresh junior lawyer who was dispatched by his senior to argue his first case in some remote mofussil [(provincial)] town. At the hearing the young lawyer prevailed. He was elated and immediately proceeded to the telegraph office and wired his senior 'Justice is done'. Exhausted, he retired to his hotel and fell into a deep sleep. He was rudely awakened by a pounding on the door. It was a messenger with a return telegram, which he tore open hastily, to find a message 'Appeal at once'.[32]

Even though he never wrote an explicit U.S.–India comparison, he felt that each of his two major papers—*Why the "Haves" Come Out Ahead*[33] and *Justice in Many Rooms*[34]—could be seen as transpositions to America of insights he attained in India. Similarly, both *The*

29. GALANTER, *supra* note 26, at 297.

30. *Id.*

31. *Id.* at 297–98. Galanter's observation of "the divergence of legal norm and social practice" resembles the view I advanced in writing critically about the "gap problem." Richard Abel, *Law Books and Books About Law*, 26 STAN. L. REV. 175, 184–89 (1973) (book review).

32. GALANTER, *supra* note 26, at 296. In his later research for *Lowering the Bar*, Marc learned that this was not exclusively an Indian lawyer joke.

33. Galanter, *supra* note 22. As Marc explained in the Introduction to a recent French translation: "The real foundation of the 'Haves' paper . . . was my work in India, particularly my analysis of the Untouchability Offences Act (1955), India's national civil rights statute, which I had published in 1969." Telephone Interview with Marc Galanter, *supra* note 3.

Modernization of Law[35] and *The Displacement of Traditional Law in Modern India*[36] construct ideal types of tradition and modernity out of the encounter between East and West.[37] And Marc's accounts of the Bhopal litigation implicitly contrast it with litigation in the U.S.[38]

At the end of *Competing Equalities*, Marc wrote:

> Perhaps the most important lesson is that there is no single big lesson. That is, there is no large general consequence that flows inexorably from embrace of a principle of compensatory preference. Compensatory discrimination does not necessarily extinguish commitments to merit and evenhandedness, and it does not necessarily metastasize into a comprehensive system of communal quotas. On the other hand, it does not automatically produce the sought-after redistribution and it is not costless.
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> . . . [T]here is the tendency of the program to cast a symbolic shadow much longer than the program itself, producing demoralization and resentment far disproportionate to the benefits delivered.[39]

Law is not perfectly self-executing and does not create a slippery slope along which descent is unstoppable. A law's unanticipated consequences often are more consequential than its ostensible purposes. For these reasons, Marc favored thick description, nuance, irony, and paradox, stubbornly resisting impatient demands for the bottom line, the take away, and the sound bite.

B. Ascriptive Groups

Marc's scholarship on India necessarily focused on the ascriptive groups that construct its society. The titles of his early articles referenced them in a number of ways: "backward classes,"[40] "caste disabili-

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34. Marc Galanter, *Justice in Many Rooms—Courts, Private Ordering, and Indigenous Law*, 19 J. LEGAL PLURALISM 1 (1981).

35. Marc Galanter, *The Modernization of Law*, *in* MODERNIZATION: THE DYNAMICS OF GROWTH 153 (Myron Weiner ed., 1966).

36. Marc Galanter, *The Displacement of Traditional Law in Modern India*, 24 J. SOC. ISSUES 65 (1968).

37. My *Comparative Theory* article does the same. *See generally* Abel, *supra* note 27 (drawing on comparisons between the U.S. and the legal anthropological literature on pre-industrial societies).

38. Marc Galanter, *India's Tort Deficit: Sketch for a Historical Portrait*, *in* FAULT LINES: TORT LAW AS CULTURAL PRACTICE 47 (David M. Engel & Michael McCann eds., 2009); Marc Galanter, *Legal Torpor: Why So Little Has Happened in India After the Bhopal Tragedy*, 20 TEX. INT'L L.J. 273 (1985); Marc Galanter, *When Legal Worlds Collide: Reflections on Bhopal, the Good Lawyer, and the American Law School*, 36 J. LEGAL EDUC. 292 (1986).

39. GALANTER, *supra* note 25, at 563, 565.

40. Marc Galanter, *"Protective Discrimination" for Backward Classes in India*, 3 J. INDIAN L. INST. 39 (1961).

ties,"[41] "group membership,"[42] "law and caste,"[43] "the religious aspects of caste,"[44] "group preferences and group membership,"[45] and "changing legal conceptions of caste."[46] Significantly, the only paper he had written on American law at the time addressed freedom of religion. Marc sent it to a former teacher, Wilbert G. Katz, whose recommendation led to it being published in the *Wisconsin Law Review* (anticipating Marc's appointment in Madison by a decade).[47] Two decades later, Marc wrote about the overrepresentation of Jews in the American legal profession.[48] It took Rajeev Dhavan, who edited Marc's papers on India for publication in book form, to show Marc "how much [his] focus on pluralism and accommodation reflect[ed] a (then) barely articulated concern about Jewish identity and continuity."[49] In 1963, Marc had criticized the Israeli Supreme Court "for failing to adopt a suitably pluralistic solution to the question of Jewish identity."[50] Nearly four decades later, he collaborated with Jayanth Krishnan on a comparison of the ways in which Israel and India dealt with religious personal law.[51]

C. *Litigation*

Marc's best known article, *Why the "Haves" Come Out Ahead*, has been reprinted many times[52] and translated into multiple languages.[53]

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41. Marc Galanter, *Caste Disabilities and Indian Federalism*, 3 J. INDIAN L. INST. 205 (1961).

42. Marc Galanter, *The Problem of Group Membership: Some Reflections on the Judicial View of Indian Society*, 4 J. INDIAN L. INST. 331 (1962).

43. Marc Galanter, *Law and Caste in Modern India*, 3 ASIAN SURV. 544 (1963).

44. Marc Galanter, *The Religious Aspects of Caste: A Legal View*, *in* SOUTH ASIAN POLITICS AND RELIGION 277 (Donald Eugene Smith ed., 1966).

45. Marc Galanter, *Group Membership and Group Preferences in India*, 2 J. ASIAN & AFR. STUD. 91 (1967).

46. Marc Galanter, *Changing Legal Conceptions of Caste*, *in* STRUCTURE AND CHANGE IN INDIAN SOCIETY 299 (Milton Singer & Bernard S. Cohn eds., 1968).

47. *See* Marc Galanter, *Religious Freedoms in the United States: A Turning Point?*, 1966 WIS. L. REV. 217.

48. *See* Marc Galanter, *A Vocation for Law? American Jewish Lawyers and Their Antecedents*, 26 FORDHAM URB. L.J. 1125 (1999).

49. GALANTER, *supra* note 26, at 300 n.8.

50. *Id.* (citing Marc Galanter, *A Dissent on Brother Daniel*, COMMENTARY, July 1963, at 10).

51. Marc Galanter & Jayanth Krishnan, *Personal Law Systems and Religious Conflict: A Comparison of India and Israel*, *in* RELIGION AND PERSONAL LAW IN SECULAR INDIA 270 (Gerald James Larson ed., 2001).

52. Galanter, *supra* note 22, *reprinted in* THE LAW & SOCIETY READER 297 (Richard L. Abel ed., 1995); Galanter, *supra* note 22, *reprinted in* LAW AND SOCIETY 165 (Roger Cotterrell ed., 1994); Galanter, *supra* note 22, *reprinted in* THE STRUCTURE OF PROCEDURE 199 (Robert M. Cover & Owen M. Fiss eds., 1979).

53. *See, e.g.*, Marc Galanter, *Por que los "Posedores" Salen Adelante: Especulaciones Sobre los Limites del Cambio Juridico*, *in* SOCIOLOGICA JURIDICAL: TEORIA Y SOCIOLOGIA DEL DERECHO EN ESTADOS UNIDOS (M.G. Villegas ed. 2001) (Colom.); Marc Galanter, *De Duivel Schijt*

On its twenty-fifth anniversary, it was the subject of a symposium in the *Law & Society Review*[54] and was reprinted in a book with related articles and bibliography.[55] The article launched Marc's life-long interest in litigation.[56] Because this interest coincided with conservative attacks on civil litigation and the construction and dissemination of fictitious stories about American litigiousness (epitomized by the largely apocryphal tale of the McDonald's coffee lawsuit), Marc devoted several articles to puncturing those myths. One of those articles, *Reading the Landscape of Disputes*, became the sixty-fifth most cited law review article.[57]

The titles alone suggest the wry humor Marc used to deflate the claims of politicians, pundits, and propagandists: *The Legal Malaise; Or, Justice Observed*,[58] *The Day After the Litigation Explosion*,[59] *News from Nowhere: The Debased Debate on Civil Justice*,[60] *Real World Torts: An Antidote to Anecdote*,[61] *Anyone Can Fall Down a Manhole: The Contingency Fee and Its Discontents*,[62] and *An Oil Strike in Hell: Contemporary Legends About the Civil Justice System*.[63] But, as we repeatedly learn to our dismay, it is difficult to rebut a world view when the political movement promoting it ridicules the "reality-based community" of "people who believe that solutions emerge from your judicious study of discernible reality."[64]

Altijd op de Grote Hoop: Bespiegelingen over de Grenzen van Rechtshervorming, *in* VAKGROUP RECHTSFILOSOFIE EN RECHTSSOCIOLOGIE, EEN KENNISMAKING MET DE RECHTSSOCIOLOGIE EN RECHTSANTHROPOLOGIE (1987) (Neth.); Marc Galanter, *Perche Gli Abbienti Si Avvantaggiano. Riflessioni Sui Limiti Del Riformismo Giuridico*, 7 POLITICA DEL DIRITTO 307 (1976) (It.).

54. Symposium, *Do the "Haves" Still Come Out Ahead?*, 33 LAW & SOC'Y REV. 795 (1999).

55. *See* IN LITIGATION: DO THE "HAVES" STILL COME OUT AHEAD? (Herbert M. Kritzer & Susan S. Silbey eds., 2003).

56. In fact, the special double issue in which it appeared contained another article written by Marc. Marc Galanter, *Afterword: Explaining Litigation*, 9 LAW & SOC'Y REV. 347 (1975).

57. *See* Shapiro, *supra* note 23, at 770 tbl.1 (citing Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (And Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4 (1983)).

58. Marc Galanter, Presidential Address, *The Legal Malaise; Or, Justice Observed*, 19 LAW & SOC'Y REV. 537 (1985).

59. Marc Galanter, *The Day after the Litigation Explosion*, 46 MD. L. REV. 3 (1986).

60. Marc Galanter, *News from Nowhere: The Debased Debate on Civil Justice*, 71 DENV. U. L. REV. 77 (1993).

61. Marc Galanter, *Real World Torts: An Antidote to Anecdote*, 55 MD. L. REV. 1093 (1996).

62. Marc Galanter, *Anyone Can Fall Down a Manhole: The Contingency Fee and Its Discontents*, 47 DEPAUL L. REV. 457 (1998).

63. Marc Galanter, *An Oil Strike in Hell: Contemporary Legends About the Civil Justice System*, 40 ARIZ. L. REV. 717 (1998).

64. Ron Suskind, *What Makes Bush's Presidency So Radical—Even to Some Republicans—Is His Preternatural, Faith-Infused Certainty in Uncertain Times: Without a Doubt*, N.Y. TIMES, Oct. 17, 2004, at 44 (quoting a senior adviser to President George W. Bush) (internal quotation marks omitted).

D. Alternative Dispute Resolution and Judge-Led Settlement

Marc's interest in litigation naturally led him to study its variants and alternatives.[65] The massive differences between the mythic version of American law he absorbed in law school and the actual functioning of law he observed in India led Marc to argue, in *Justice in Many Rooms*, that legal pluralism, not monism, was the norm.[66] This seminal article was also reprinted[67] and translated into multiple languages.[68] Looking through eyes opened by India, Marc perceived not only that the United States contained an enormous diversity of dispute institutions and processes, but also that even its formal legal system necessarily operated in informal ways. We did not have to create alternative dispute resolution in emulation of a romanticized view of pre-industrial societies; courts already engaged in what Marc called "litigotiation."[69] Thus, whereas Marc's initial exposure to India highlighted its differences with the United States, his re-examination of American law illuminated fundamental similarities between the two countries.

E. Lawyers

Marc's interest in the legal profession began early: co-teaching a seminar in Chicago with Alan Barton in 1956–1957, organizing a conference on the Indian legal profession in Chicago and editing the papers for a special double issue of the *Law & Society Review* in the 1960s, and participating in a seminar on the legal profession at Yale in 1970. A decade later, the *National Law Journal*, *American Lawyer*, and other popular publications illuminated the previously opaque workings of large law firms.[70] Fascinated, Marc wrote an article about

65. *See, e.g.*, Marc Galanter, *Adjudication, Litigation, and Related Phenomena*, *in* LAW AND THE SOCIAL SCIENCES 151 (Leon Lipson & Stanton Wheeler eds., 1986).

66. *See* Galanter, *supra* note 34, at 17.

67. Galanter, *supra* note 34, *reprinted in* ACCESS TO JUSTICE AND THE WELFARE STATE 147 (Mauro Cappelletti ed., 1981).

68. *See, e.g.*, Marc Galanter, *A Justicia nao se Encontra Apenas nas Decisoes do Tribunals*, *in* JUSTICA E LITIGIOSIDADE (A.M. Hespanha ed., 1993) (Port.); Marc Galanter, *Gerechtigheid in Verschillende Gedaanten: Rechtbanken, Niet-Officiele Regulering en Het Volksrecht*, 13 RECHT EN KRITIEK 122 (1987) (Neth.); Marc Galanter, *In Seisi e no Akusesu to Fukoshi Kokka* (M. Cappelletti ed. 1987) (Japan); Marc Galanter, *La Justice ne se Trouve pas Seuelement dans les Décisions de Tribunaux*, *in* ACCÈS Á LA JUSTICE ET ETAT-PROVIDENCE (1984) (Fr.).

69. Marc Galanter, ". . . *A Settlement Judge, Not a Trial Judge": Judicial Mediation in the United States*, 12 J.L. & SOC'Y 1 (1985); *see also* Marc Galanter, *The Emergence of the Judge as a Mediator in Civil Cases*, 69 JUDICATURE 256, 262 (1986); Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004).

70. *Cf.* Bates v. State Bar of Ariz., 433 U.S. 350 (1977).

"mega-lawyering."[71] This contained the germ of his work with Thomas Palay, published ten years later, which explained the geometric growth of law firms in terms of relationships between partners and associates.[72] Marc extended those ideas in his work on the aging of the American legal profession,[73] gender differences in the profession,[74] similarities and differences in the structures of large firms in the United States and the United Kingdom,[75] and the growth in the population of lawyers around the world.[76] Just as he had debunked claims about contemporary litigiousness, he disabused nostalgic visions of a golden age of the American legal profession.[77]

F. Lawyer Jokes

Marc has always liked jokes, to the delight of his multitudinous audiences. Irreverence, incongruity, and the counterintuitive have always been his modus operandi. Marc started collecting lawyer jokes unsystematically, looking in used bookstores in each of the (many) cities he visited during his peripatetic lecturing. He now has over a thousand. Then, at a dinner hosted by Jerome Carlin in Berkeley, Marc met Alan Dundes, America's leading scholar on humor. As their close friendship developed, Alan guided Marc through the world of jokes. The ultimate product was Marc's book, *Lowering the Bar: Lawyer Jokes and Legal Culture*.[78]

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71. Marc Galanter, *Mega-Law and Mega-Lawyering in the Contemporary United States*, *in* THE SOCIOLOGY OF THE PROFESSIONS: LAWYERS, DOCTORS AND OTHERS 152 (Robert Dingwall & Philip Lewis eds., 1983).

72. *See* MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); *see also* Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008).

73. *See* Marc Galanter, *"Old and in the Way": The Coming Demographic Transformation of the Legal Profession and Its Implications for the Provision of Legal Services*, 1999 WIS. L. REV. 1081.

74. *See* Kenneth G. Dau-Schmidt, Marc S. Galanter, Kaushik Mukhopadhaya & Kathleen E. Hull, *Men and Women of the Bar: The Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49 (2009).

75. *See* Marc Galanter & Simon Roberts, *From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century*, 15 INT'L J. LEGAL PROF. 143 (2008).

76. *See* Marc Galanter, *More Lawyers than People: The Global Multiplication of Legal Professionals*, *in* THE PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE 68 (Scott L. Cummings ed., 2011).

77. *See* Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549 (1996).

78. MARC GALANTER, LOWERING THE BAR: LAWYER JOKES AND LEGAL CULTURE (2005). Another manifestation of Marc's interest in popular culture is his book, *Lawtalk*. *See* JAMES E. CLAPP, ELIZABETH G. THORNBURG, MARC GALANTER & FRED R. SHAPIRO, LAWTALK: THE UNKNOWN STORIES BEHIND FAMILIAR LEGAL EXPRESSIONS (2011).

III. CONCLUSION

What unites Marc's writing on these six topics, illustrated by a small selection from his more than six books and one hundred articles? Despite their diversity, everything is related to everything else: India to the United States, religion to caste, litigation to judging and alternative dispute resolution, and lawyers to jokes. Marc is a hoarder, never throwing anything out—not a clipping or an article, and certainly not an idea. They all get filed in his attic library, where he recombines them to produce new dishes with exotic flavors and, as always, a great presentation. He constantly debunks received wisdom.

Just as Marc insists on pluralism rather than monism, he shows that every social institution and process has perverse, often unanticipated, consequences. The pursuit of equality creates its own inequalities (a variant of Weber's iron cage).[79] Formal law cannot function without informal processes. The tournament of lawyers contains the seeds of its own destruction (attested to in recent law firm collapses). Marc continues to do in the social study of law what E. M. Forster exhorted in his novels: "only connect."[80] And in doing so, he connects with us—and us with each other.

79. *See* ARTHUR MITZMAN, THE IRON CAGE: AN HISTORICAL INTERPRETATION OF MAX WEBER (1970).

80. E. M. FORSTER, HOWARDS END 183 (1910).